(2) The statement of the case contained in said certificate is not sufficiently complete to enable this Court to answer the second question as applied to this case. The answer to such question of necessity involves a determination of whether the railroad bank account and the First and Refunding Bonds held by the bank were "mutual debts or mutual credits" within the meaning of Section 68 of the Bankruptcy Act. Such question cannot be determined upon the mere statement that the bank owed the railway upon a deposit account and the bank held First and Refunding Bonds of the railway which were not yet due. The record, which is filed as an exhibit hereto, shows the following facts which do not appear from the statement of the case contained in the certificate of the Court below, to-wit:

(a) The First and Refunding Bonds held by the bank were issued April 1, 1904, and were due April 1, 1934. They were payable in New York City, both as to principal and interest, and were secured by trust deed upon the properties of the railway. Interest was evidenced by coupons attached to the original bonds, payable April 1, and October 1 of each year. All bonds held by the bank were payable to bearer. The total authorized issue of such First and Refunding Bonds was $163,000,000, of which more than $104,000,000 was issued and in the hands of the public. These bonds were and are quoted on the New York Stock Exchange and other stock exchanges, and were dealt in by security holders in all parts of the world.

(b) The bonds held by the bank, and which it attempted to use as a set-off, were not purchased by it from the railway, but were purchased in New York City on the open market, some from the Guaranty Trust Company and some from the National City Company. They were acquired by the bank between November, 1927, and October, 1930, at prices ranging from 94¾ to

99⅜. There were no direct dealings with respect to said bonds between the bank and the railway.

(c) The railway did not keep any record of the holders of its outstanding bonds which were payable to bearer, and did not know that the bank owned these particular bonds.

These facts are essential to a determination of the second question certified.

Scott vs. Armstrong, 146 U. S. 499.

Hanover National Bank vs. Suddath, 215 U. S. 122.

United States Fidelity Company vs. Woolridge, 268 U. S. 234.

Carr vs. Hamilton, 129 U. S. 252.

New York County National Bank vs. Massey, 192 U. S. 138.

This Court should have the entire record before it in order to show such facts.

Respectfully submitted,

M. L. BELL,
DANIEL TAYLOR,
ALEXANDER E. HORN,
EDWARD S. STRINGER,
Counsel for Appellants Below.